

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
)
v.) **Case No. 07-CR-0018-001-CVE**
 (09-CV-0714-CVE-TLW)
DEVIN LEE MELCHER,)
)
)
Defendant.)

OPINION AND ORDER

Defendant Devin Lee Melcher filed a notice of appeal (Dkt. # 214) on January 19, 2010.¹

Melcher seeks to appeal the Court's Opinion and Order (Dkt. # 212) denying his motion to vacate, set aside or correct sentence under 28 U.S.C. § 2255. Judgment (Dkt. # 213) was entered on January 5, 2010.

Pursuant to 28 U.S.C. § 2253, a defendant is required to obtain a certificate of appealability before appealing a final order in a proceeding under 28 U.S.C. § 2255. The district court must consider the propriety of issuing a certificate of appealability in the first instance. 10th Cir. R. 22.1(C). Section 2253(c) instructs that the court may issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right," and the court "indicates which specific issue or issues satisfy [that] showing." A defendant can satisfy that standard by demonstrating that the issues raised are debatable among jurists, that a court could resolve the issues differently, or that the questions deserve further proceedings. Slack v. McDaniel,

¹ A notice of appeal constitutes a request for a certificate of appealability. 10th Cir. R. 22.1(A).

529 U.S. 473 (2000) (citing Barefoot v. Estelle, 463 U.S. 880, 893 (1983)). After considering the record in this case, the Court concludes that a certificate of appealability should not issue as Melcher has not made a substantial showing of the denial of a constitutional right. The record is devoid of any authority suggesting that the Tenth Circuit Court of Appeals would resolve the issues in this case differently. Melcher's request for a certificate of appealability is denied.

IT IS THEREFORE ORDERED that a certificate of appealability is **denied**.

IT IS FURTHER ORDERED that the Court Clerk is directed to send a copy of this Opinion and Order to the Tenth Circuit Court of Appeals.

DATED this 20th day of January, 2010.


CLAIRES V. EAGAN, CHIEF JUDGE
UNITED STATES DISTRICT COURT